

Assembly Bill No. 2671

CHAPTER 648

An act to amend and repeal Sections 14030, 14070, and 14076 of, and to repeal Section 14069.6 of, the Corporations Code, relating to small business financial development corporations.

[Approved by Governor September 27, 2012. Filed with
Secretary of State September 27, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2671, Committee on Jobs, Economic Development, and the Economy. Small business financial development corporations: loans and loan guarantees.

(1) The California Small Business Financial Development Corporation Law authorizes the formation of small business financial development corporations to grant loans or loan guarantees for the purpose of stimulating small business development. The law imposes certain duties with respect thereto on a director designated by the Secretary of Business, Transportation and Housing. The California Small Business Expansion Fund, which is created under that law and is continuously appropriated, provides funds to be used to pay for defaulted loan guarantees and administrative costs of these corporations. Existing law, until January 1, 2013, specifies that the amount of guarantee liability outstanding at any one time shall not exceed 5 times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the fund to another fund in state government, as specified. Existing law, beginning January 1, 2013, instead provides that the amount of guarantee liability outstanding shall not exceed 4 times those amounts.

This bill would extend, until January 1, 2018, the provisions limiting the amount of guarantee liability outstanding from exceeding 5 times the amount of funds on deposit in the expansion fund, as specified. The bill would also provide that the provisions limiting the amount of guarantee liability outstanding from exceeding 4 times the amount of those funds become operative on January 1, 2018.

Existing law requires the former Trade and Commerce Agency to contract with an entity to conduct an independent statewide assessment of capital needs in California pertaining to the program established under the California Small Business Financial Development Corporation Law, and to establish minimum standards for the siting of small business financial development corporations, to be completed no later than June 30, 1998.

This bill would repeal that obsolete requirement imposed on the abolished agency.

(2) Existing law requires a corporate guarantee to be backed by funds on deposit in the corporation's trust fund account, or by receivables due from the corporation's trust fund account to another fund in state government, as specified. Existing law, until January 1, 2013, requires that loan guarantees be secured by a reserve of at least 20%, to be determined by the director. Existing law, beginning January 1, 2013, requires that loan guarantees be secured by a reserve of at least 25%, to be determined by the director.

This bill would make the minimum 20% reserve requirement effective only until January 1, 2018. The bill would provide that the provisions requiring a minimum 25% reserve become operative on January 1, 2018. The bill would make conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 14030 of the Corporations Code, as amended by Section 1 of Chapter 601 of the Statutes of 2007, is amended to read:

14030. (a) There is hereby created in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds. The expansion fund and the trust fund shall be used to pay for defaulted loan guarantees issued pursuant to Article 9 (commencing with Section 14070), administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. The amount of guarantee liability outstanding at any one time shall not exceed five times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the expansion fund to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature, including each of the trust fund accounts within the trust fund.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 2. Section 14030 of the Corporations Code, as added by Section 2 of Chapter 601 of the Statutes of 2007, is amended to read:

14030. (a) There is hereby created in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds. The expansion fund and the trust fund shall be used to pay for defaulted loan guarantees issued pursuant to Article 9 (commencing with Section 14070), administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. The amount of guarantee liability outstanding at any one time shall not exceed four times the amount of funds on deposit in the expansion fund

plus any receivables due from funds loaned from the expansion fund to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature, including each of the trust fund accounts within the trust fund, unless the director has permitted a higher leverage ratio for an individual corporation pursuant to subdivision (b) of Section 14037.

(b) This section shall become operative on January 1, 2018.

SEC. 3. Section 14069.6 of the Corporations Code is repealed.

SEC. 4. Section 14070 of the Corporations Code, as amended by Section 5 of Chapter 601 of the Statutes of 2007, is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's trust fund account, or by receivables due from funds loaned from the corporation's trust fund account to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature.

(b) Loan guarantees shall be secured by a reserve of at least 20 percent to be determined by the director.

(c) The expansion fund and trust fund accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations. A corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Department of Agriculture. The amount of funds available for direct farm lending shall be determined by the director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. The agency shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the trust funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the director may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan authorized by the director to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the agency loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the agency and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the agency. The terms and conditions of the credit agreement shall be similar to the loan

agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the agency is limited to the repayment received by the corporation from the borrower except in a case where the United States Department of Agriculture requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the agency if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the agency from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the director, a corporation shall be authorized to borrow trust funds from the agency for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund account shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars (\$50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the agency that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the director pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

(g) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 5. Section 14070 of the Corporations Code, as added by Section 6 of Chapter 601 of the Statutes of 2007, is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's trust fund account, or by receivables due from funds loaned from the corporation's trust fund account to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the director, unless the director authorizes a higher leverage ratio for an individual corporation pursuant to subdivision (b) of Section 14037.

(c) The expansion fund and trust fund accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations. A corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans,

calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Department of Agriculture. The amount of funds available for direct farm lending shall be determined by the director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. The agency shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the trust funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the director may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan authorized by the director to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the agency loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the agency and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the agency. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the agency is limited to the repayment received by the corporation from the borrower except in a case where the United States Department of Agriculture requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the agency if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the agency from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the director, a corporation shall be authorized to borrow trust funds from the agency for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund account shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars (\$50,000).

In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the agency that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the director pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

(g) This section shall become operative on January 1, 2018.

SEC. 6. Section 14076 of the Corporations Code, as amended by Section 7 of Chapter 601 of the Statutes of 2007, is amended to read:

14076. (a) It is the intent of the Legislature that the corporations make maximal use of their statutory authority to guarantee loans and surety bonds, including the authority to secure loans with a minimum loan loss reserve of only 20 percent, so that the financing needs of small business may be met as fully as possible within the limits of corporations' loan loss reserves. The agency shall report annually to the Legislature on the financial status of the corporations and their portfolio of loans and surety bonds guaranteed.

(b) Any corporation that serves an area declared to be in a state of emergency by the Governor or a disaster area by the President of the United States, the Administrator of the United States Small Business Administration, or the United States Secretary of Agriculture shall increase the portfolio of loan guarantees where the dollar amount of the loan is less than one hundred thousand dollars (\$100,000), so that at least 15 percent of the dollar value of loans guaranteed by the corporation is for those loans. The corporation shall comply with this requirement within one year of the date the emergency or disaster is declared. Upon application of a corporation, the director may waive or modify the rule for the corporation if the corporation demonstrates that it made a good faith effort to comply and failed to locate lending institutions in the region that the corporation serves that are willing to make guaranteed loans in that amount.

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 7. Section 14076 of the Corporations Code, as added by Section 8 of Chapter 601 of the Statutes of 2007, is amended to read:

14076. (a) It is the intent of the Legislature that the corporations make maximal use of their statutory authority to guarantee loans and surety bonds, including the authority to secure loans with a minimum loan loss reserve of only 25 percent, unless the agency authorizes a higher leverage ratio for an individual corporation pursuant to subdivision (b) of Section 14037, so that the financing needs of small business may be met as fully as possible within the limits of corporations' loan loss reserves. The agency shall report annually to the Legislature on the financial status of the corporations and their portfolio of loans and surety bonds guaranteed.

(b) Any corporation that serves an area declared to be in a state of emergency by the Governor or a disaster area by the President of the United

States, the Administrator of the United States Small Business Administration, or the United States Secretary of Agriculture shall increase the portfolio of loan guarantees where the dollar amount of the loan is less than one hundred thousand dollars (\$100,000), so that at least 15 percent of the dollar value of loans guaranteed by the corporation is for those loans. The corporation shall comply with this requirement within one year of the date the emergency or disaster is declared. Upon application of a corporation, the director may waive or modify the rule for the corporation if the corporation demonstrates that it made a good faith effort to comply and failed to locate lending institutions in the region that the corporation serves that are willing to make guaranteed loans in that amount.

(c) This section shall become operative on January 1, 2018.